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## Indiana Election Division

# MEMO

To: J. Bradley King and Kristi Robertson, Co-Directors of the Indiana Election Division

From: Dale Simmons and Cody Kendall, Co-Counsels, Indiana Election Division

Date: May 1, 2006

Re: Photo ID Interpretations

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We have received calls requesting practical guidance in the administration of Indiana's Photo ID law. More specifically, the questions regarded interpreting the elements of the definition of "proof of identification" found at IC 3-5-2-40.5, which provides as follows:

- (1) The document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record.
- (2) The document shows a photograph of the individual to whom the document was issued.
- (3) The document includes an expiration date, and the document:
  - (A) is not expired; or
  - (B) expired after the date of the most recent general election.
- (4) The document was issued by the United States or the state of Indiana.

The purpose of this memo is to provide some legal analysis of the questions presented by county election officials in their requests for guidance for the purpose of developing an agreed upon communication to county election officials that provides advisory guidance.

### **Meaning of "Conform"**

IC 3-5-2-40.5(1) requires that the name that appears on a Photo ID *conform* to the name in the person's voter registration record as printed on the poll book. The specific language in IC 3-5-2-40.5(1) regarding this requirement is: "The document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record." A common question regarding this requirement is whether this requires that the name on the Photo ID be identical, or merely similar, to the name on the poll book.

We note that the relevant definition of "conform" in Merriam-Webster's Online Dictionary indicates that it means "to be similar or identical." However, we find additional guidance in

case law that provides direction as to how the statute should be interpreted in this context. In Indiana, with some exceptions that apply to absentee voting, “the general rule requires that election laws be construed liberally in favor of the electors.” *Brown v. State ex rel. Stack*, 84 N.E.2d 883 (Ind. 1949).

Therefore, three factors lead us to the conclusion that the legislature intended the word conform be synonymous to “similar” rather than “identical”, namely:

1. The General Assembly could have easily chosen to use the words “exact” or “identical” in the place of the word conform because these are common words;
2. Interpreting conform to mean “similar” is consistent with the dictionary definition of “conform”; and
3. Interpreting “conform” to mean “similar” rather than “identical” is more consistent with the general rule in Indiana to construe election laws “liberally in favor of electors.”

This interpretation of the word conform will provide helpful guidance. It may also be helpful to provide some examples to illustrate common name variations. For example, people not only use their given first name or common nicknames for their first name but also substitute their middle name for their given first name or a common nickname for their middle name as a substitute for their given first name. People also commonly substitute an initial for their given first or middle name. For example, common variations of the name “Robert John Crew” that are similar or conforming would, in our view, include:

Robert John Crew  
Robert J. Crew  
Robert Crew  
R. John Crew  
Bob John Crew  
Bob J. Crew  
Bob Crew  
John Crew  
J. Crew.

### **Name Changes**

Another issue that should be clarified has to do with individuals who have changed their name so that their photo ID does not appear to conform to the name on the poll book. For example, it is not uncommon for an individual to take their spouses last name after marriage. However, this person may have registered to vote under a maiden name and subsequently obtained a Photo ID that contains their spouse’s last name instead of their maiden name.

For example, if a person registers to vote as Patty Jones and then subsequently marries Ricky Nelson and obtains a driver’s license under the name Patty Nelson. On Election Day Patty presents her Photo ID with the name Patty Nelson which does not appear to conform to the name on the poll book, Patty Jones.

Nonetheless, in our view, Patty’s Photo ID does conform if she utilized the fail-safe provision described in IC 3-7-41-2, which provides, in relevant part:

“A voter who wishes to indicate that the voter’s name has changed may... write the necessary information concerning the name change on the poll list...before the person receives a ballot...”

The person who has written the information concerning the name change: “may then vote if otherwise qualified.” If the voter does so, IC 3-7-41-3 directs that: “the county voter registration office shall change the name of the voter on the registration record of the precinct.”

Under these circumstances, the voter has been permitted to legally vote under the newly changed name and, therefore, must be considered to be registered under the newly changed name as well. There is nothing further the voter needs to do after signing the poll book to change her voter registration to “Patty Nelson” and, therefore, once she has signed the poll book, her Photo ID would conform to the name on the poll book.

We are mindful that this presents a challenge for the precinct election board who may feel uncomfortable with the voter signing the poll book before the determination is made that the Photo ID meets the requirements of the Photo ID law. However, to interpret the Photo ID law any other way would appear to contradict IC 3-7-41-2. Our interpretation, notwithstanding other statutes that may expressly or impliedly conflict with IC 3-7-41-2, is consistent with the general rule that “election laws be construed liberally in favor of the electors.” *Brown v. State ex rel. Stack*, 84 N.E.2d 883 (Ind. 1949).

### **Photo ID issued by State-Supported College or University**

IC 3-5-2-40.5(4) requires that a Photo ID be “issued by the United States or the state of Indiana.” We have received inquiries about whether Photo ID cards issued by state supported post-secondary educational institutions would comply with the requirement that the Photo ID be issued by “the state of Indiana.”

It is our opinion that state supported colleges and the universities are agencies of the state and, therefore, a Photo ID issued by one of these institutions satisfies the requirement in the Photo ID law that a Photo ID be issued by the “state of Indiana.” We find support for this position in both case law and Indiana statute.

In *State Board of Accounts v. I.U. Foundation*, 647 N.E.2d 342 (Ind. Ct. App.1995) the court noted that the word “state... includes an agency of the state, and Indiana University is a state agency.” In *Colburn v. Trustees of Indiana University* (S.D. Ind. 1990), 739 F. Supp. 1268, *aff’d*, 973 F.2d 581, the court held that the facts showed that Indiana University was a state agency and was, therefore, entitled to “qualified immunity.” In support of that conclusion the court noted that the Indiana General Assembly and the Governor’s office retain significant control over the university’s budget.

The court’s conclusion in *Colburn* also finds support in Indiana statute. In fact, IC 4-12-1-2(d), defines “state agency” to include “the universities and colleges supported in whole or in part by state funds...”

Therefore, considering both case law, and Indiana statute, and again mindful that “the general rule requires that election laws be construed liberally in favor of the electors”, it is our opinion that a state supported college or university in Indiana is the “state of Indiana” for purposes of issuing Photo ID.

Of course, photo ID issued by a state supported college or university must meet the other requirements of statute to be valid, namely: 1) the Photo ID must contain a photograph of the person; 2) the person’s name on the Photo ID must conform to the name on the poll book; and 3) the Photo ID must include an expiration date showing it is not expired or that it expired after Nov. 2, 2004.

Next we turn to the task of identifying state supported schools that would be considered an agency of the state. We observe that state supported schools are all created by statute. They are generally defined at IC 20-12-.05-1 (state educational institution). Here is a listing of applicable statutes that identify and establish state supported school:

IC 20-12-1-2 (Ball State, Indiana State, Indiana University, Purdue, University of Southern Indiana)

IC 20-12-23 et seq. (IU and its various schools, including professional schools);

IC 20-12-35 et seq. (Purdue and its additional schools);

IC 20-12-56 et seq. (Indiana State)

IC 20-12-57.5 et seq. (Ball State)

IC 20-12-61 et seq. (Ivy Tech)

IC 20-12-64 et seq. (University of Southern Indiana)

IC 23-13-18 (Vincennes)

We believe the following link identifies these schools and provides contact information:

<http://www.che.state.in.us/sc>

### **Military ID**

Another issue that we have been faced with pertains to expiration dates. Specifically, we have been provided a military Photo ID that has obviously been issued by the United States. This Photo ID also contains a photograph of the person to whom it was issued. The Photo ID has a box labeled "Expiration Date." There is no specific calendar date identified in the box labeled "Expiration Date", however, the box does contain the word "INDEF", an abbreviation for indefinite.

The Photo ID statute, IC 3-5-2-40.5(3) states, in relevant part:

"The document includes an expiration date, and the document:  
(A) is not expired; or  
(B) expired after the date of the most recent general election."

We have been asked whether this type of Photo ID that identifies its expiration date as "INDEF" satisfies the above requirement in Indiana's Photo ID law.

We note that, in this context, the relevant definition in Merriam-Webster's Online Dictionary of the word "date" is "the time at which an event occurs." Further, it seems evident that the purpose behind requiring an expiration date was to assure the presentation of a Photo ID that was "current" (or at least as current as of the last general election).

We find that this Photo ID meets the expiration date requirement of the Photo ID law for two reasons. First, we can tell from an examination of this Photo ID that it is still current and has not yet expired so the Photo ID satisfies the apparent purpose of the statute. Second, the Photo ID literally contains a box titled expiration date, even though the entry does not identify a calendar date. However, the entry "INDEF" does satisfy the meaning of "date" by identifying the "time at which the event (expiration) occurs" in the only way possible under these circumstances - by indicating that expiration will occur at some indefinite time in the

future (presumably on death of the holder of the Photo ID).

### **State Licensed Care Facility**

IC 3-11-8-25(e) provides: “A voter who votes in person at a precinct polling place that is located at a state licensed care facility where the voter resides is not required to provide proof of identification before voting in an election.”

We could not find the precise term “state licensed care facility” defined in the code. We assume that the definition was more of a practical definition to cover residential facilities that are licensed by the state and provide some type of care.

There are statutes, namely IC 16-18-2-161 and IC 16-28-13-0.5, that define “Health care facilities” which include hospitals, licensed private mental health institutions, tuberculosis hospitals, rehabilitation facilities, kidney disease treatment centers, ambulatory outpatient surgical centers, home health agencies and hospice programs. However, many of these types of facilities are not the type that would be considered, in a practical sense, a residence. However the definition of “Health care facilities” also includes, in part, health facilities licensed under IC 16-28.

The two types of facilities that provide longer term residential care, and are synonymous with the generic term “nursing home”, are licensed “comprehensive care facilities” (410 IAC 16.2-1.1-14) and “residential care facilities” (410 IAC 16.2-1.1-62).

The administrative regulation defining a “comprehensive care facility” states as follows:

#### **410 IAC 16.2-1.1-14 “Comprehensive care facility” defined**

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28

Sec. 14. “Comprehensive care facility” means a health facility that provides nursing care, room, food, laundry, administration of medications, special diets, and treatments and that may provide rehabilitative and restorative therapies under the order of an attending physician. (*Indiana State Department of Health; 410 IAC 16.2-1.1-14; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1904, eff March 1, 2003*)

The administrative regulation defining a “residential care facility” states as follows:

#### **410 IAC 16.2-1.1-62 “Residential care facility” defined**

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28

Sec. 62. “Residential care facility” means a health care facility that provides residential nursing care. (*Indiana State Department of Health; 410 IAC 16.2-1.1-62; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1909, eff Mar 1, 2003*)

We have not yet been asked specific questions that required further analysis of these definitions. However, we do think it may be useful to provide counties a link to a state directory that provides a listing of these types of facilities. This may help them identify facilities in their communities. Even though this may not be a completely comprehensive listing of facilities that could be considered a “state licensed care facility” under the Photo ID law, the following link provides a directory of comprehensive care facilities and residential care facilities (as well as other licensed health care facilities) in Indiana:

<http://www.in.gov/isdh/regsvcs/providers/directories.htm>

### **Photo ID and timing**

IC 3-11.7-5-2.5 states in part that a voter challenged for inability or declination to provide proof of identification may appear at the circuit court clerk or the county election board and provide proof of identification. We have had several inquiries asking if a voter does not have a photo ID on Election Day can they have one issued within the 10 days after Election Day and bring it to the Clerk's office or does it have to be issued by Election Day to be considered current. Our opinion is that an individual may obtain the photo ID after Election Day and present it to the circuit court clerk or the county election board and satisfy the requirement under IC 3-11.7-5-2.5.